JAN 7 1949

CHARLES ELMORE CROPL
CLER

# Supreme Court of the United States

OCTOBER TERM, 1948.

No. 502

IRA CHASE KOEHNE AND JOHN A. SAVAGE, *Petitioners*,

v.

W. BRUCE MATTHEWS, United States Marshal and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents*.

**Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia and Brief in Support Thereof.**

IRA CHASE KOEHNE,
2803 18th St. N. W.,
Washington 9, D. C.
Hobart 0032.

ORILLE C. GAUDETTE,
1011 Dupont Circle Bldg.,
Washington, D. C.
Dupont 7165,
*Attorneys for Petitioners.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

## INDEX.


| | Page |
|---|---|
| Petition for Certiorari | 1-8 |
| Jurisdiction (Two paragraphs preceding Statement of Case) | 2 |
| Verification and Certificate of Counsel | 7 |
| Conflicts | 6 |
| Controlling Statutes: | |
| Title 16, sec. 801 of 1940 D.C. Code (with Information substance R. 14) | 3 |
| Title 23, sec. 101 of 1940 D.C. Code | 5 |
| Statement of Case | 2-5 |
| Questions Presented | 5-6 |
| Invitation to Government | 8 |
| Brief on Certiorari....9 & 10 and (R 11-23, whose index is R 10) | |
| AUTHORITIES: | |
| Constitution: | |
| Art. 1, Sec. 9, cl. 2 | 2(B) |
| 10th Amendment | 4(B) |
| Art. 1, Sec. 9, cl. 3 | 4(C) |
| Art. 1, Sec. 10, cl. 1 and 10th Amendment | 4(B) |
| 6th Amendment | 4(D) |
| CASES: | |
| Heuse v. Mayo, 324 U.S. 42, 45 | 6 |
| Price v. Johnston, 334 U.S. at 291 in No. 2 brown paper cover | 5, 6, 8 |
| Waley v. Johnston, 316 U.S. 101 | 6 |
| Walker v. Johnston, 312 U.S. 275, 286 | 6 |
| Williams v. Kaiser, 323 U.S. 471, 473, 474 | 6 |

# Supreme Court of the United States

OCTOBER TERM, 1948.

---

No.

---

IRA CHASE KOEHNE AND JOHN A. SAVAGE, *Petitioners,*

v.

W. BRUCE MATTHEWS, United States Marshal and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents.*

---

## PETITION FOR CERTIORARI.

---

*To the Honorable, The Chief Justice of the United States, and The Associate Justices of The Supreme Court of The United States.*

1. Your petitioners Ira Chase Koehne and John A. Savage, respectfully submit this, their joint and several petition for the issuance of the Writ of Habeas Corpus to reverse the judgment of the United States Court of Appeals for the District of Columbia (R. 8), which judgment wrongfully and unlawfully affirmed the judgment of the District Court of the United States for the District of Columbia

(R. 5) denying the Petition for Habeas Corpus (R. 1-5). Said judgments (R. 5 and 8) each materially violated the fundamental rights of petitioner Savage not to be deprived of his liberty and property except by due process of law, and to be invariably afforded the equal protection of the laws, and that he shall not be so deprived pursuant to any "judicial" suspension or neglect to duly employ any of the due and lawful privileges of the writ of habeas corpus, prohibited by Article 1, Sec. 9, cl. 2 of our Constitution; and that the subordinate Federal Courts shall not neglect to be guided by and conform to applicable decisions of this Honorable Court, hereinafter complained of as cause of the deprivation of the liberty of petitioner Savage, among the grave matters embraced in the following Questions Presented.

That should said judgments stand, they will doubtless be authority for similar deprivations menacing practically every realty owner in the District as well as encourage realty development just outside the District.

That said judgment of said Court of Appeals (R. 8) was duly subjected to a Petition for Rehearing (R. 9-23), which was denied on September 27, 1948, (R. 24); and the mandate in this cause was duly stayed through December 24th, 1948 (R. 24, 25, 26); and

By order of December 23, 1948 the Honorable Chief Justice of the United States duly extended the time for filing the Petition for Certiorari herein until on or before January 7, 1949.

## STATEMENT OF CASE.

2. (A) Your petitioners show unto your honors that petitioner John A. Savage, being unlawfully restrained of his liberty within the District of Columbia, his co-petitioner, Ira Chase Koehne, long a member of the bar of this Court, joined in the Petition for the Writ of Habeas Corpus in the District Court of the United States for the District of Co-

lumbia, in behalf of and to preclude any handicap that may arise from said restraint, pursuant to Act of Congress.[1]

(B) That said petition duly invoked judicial investigation and determination, with due process of law, of said restraint of human liberty in this capital of our greatest liberty-loving nation. That said deprivation of liberty resulted from three criminal prosecutions of petitioner Savage, Numbered 24,734, -5 & 6, in the Municipal Court of the District of Columbia, purportedly charging claimed violations of license regulations relative to the use and construction inherent in a certain residence house in said District from the time of its construction prior to the purported enactment of said regulations and the passage of the Act of Congress purportedly authorizing said regulations, which construction having been induced by the issuance by officers of the District of Columbia of a building permit therefor, which warrants that such construction is lawful throughout the last day of its useful life; and which purported license regulations, when, as herein, applied to said prior built residence house greatly impairs the obligations of the contract implied from the issuance of said building permit inducing the investment of money and building effort of said residence house in accordance with said building permit; said impairment of obligations of contracts being in

---

[1] STATUTES CITED AND INVOLVED.

1940 D. C. CODE, TITLE 16, SEC. 801:

"*Any person committed*, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, *or any person in his or her behalf, may apply by petition to the District Court of the United States for the District of Columbia*, or any justice thereof, *for a writ of habeas corpus* to the end that the cause of such commitment, detainer, confinement, or restraint may be inquired into; *and the court or the justice applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ*, directed to the officer or other person in whose custody or keeping the party so detained shall be, returnable forthwith before said court or justice."

violation of our constitution, whose Article 1, Sec. 10, cl. 1, denies such power to the States, and the Constitution not granting such power to the United States renders such power non-existent. 10th Amdt.

When compliance with said regulations was insisted upon by officers of the District of Columbia, petitioner Savage, believing that the expense of such compliance would be much less than that of a controversy thereover with the authorities, so he duly complied therewith, despite which he was prosecuted, resulting in his said deprivation of his liberty.

(C) That said license regulations, and their purported authorizing statute, even if otherwise lawful and constitutional when not applied to such prior constructed residence homes, the same are, when applied to such prior constructions, unconstitutional and ex post facto, in violation of Article 1, Sec. 9, cl. 3.

(D) The averments of the habeas corpus petition, being all undenied, this Court says "we must assume that the petitioner's allegations are true" (Near top (R. 16)). Consider the averments of Par. 8 (R. 4) and the exceptional lack of "fair trial spirit" of the license trial Court, as also disregard of the last clause of 6th Amdt. The averments of Par. 2 (R. 1, 2) of the three complex license trials consolidated into one trial and it seems to require much proof that such artificial complexity was not for the purpose, or did not have the effect, of further putting layman Savage in jeopardy for want of counsel. Supplementing Par. 8 (R. 4) with the fact upon which opinion (R. 7, 8) is significantly silent, that the Court writing opinion (R. 7, 8) fresh before such writing denied the petition of a lawyer for leave to file its accompanying amicus curiae brief on the sole question of the false evidence which wrongfully resulted in Mr. Savage's being deprived of his liberty. Such are among the later fact-development of the study of counsel, includ-

ing more specific later found statements in Re Par's. 3, 4, & 7 (R. 2, 3) and *Price* v. *Johnston*, 334 U. S. at 291 in No. 2 of brown paper cover; and of (R. 14, 15, 16) Par. 2 (a, 3 (,2 (a, 4) & 2 (a, 5) which disclose the material part of the pretended informations upon which unlawful informations petitioner was deprived most wrongfully and jurisdictionlessly of his liberty, and which were in violation of law Title 23, Sec. 101 of 1940 D. C. Code, requiring that "Prosecution * * * shall be conducted in the name of the District of Columbia * * *", which they pretendedly were—see 2nd & 3rd lines following "Per Curiam" (R. 7); but the fatal jurisdictionless facts were that the essential Informations were each in the name of the Corporation Counsel, who "* * * comes into Court and causes the Court to be informed, and complains that John A. Savage —" (R. 14); and bear in mind that such Corporation Counsel or an assistant "— in his proper person, comes into Court and causes the Court to be informed, and complains that John A. Savage * * *"

## QUESTIONS PRESENTED.

1. The judgments of both Courts below in this cause be vacated because they did not apply but did suspend or not apply to the habeas corpus petition a privilege, or all available privileges, in force at the time of the adoption of our Constitution as well as provided by law, including Title 16, section 801 of the 1940 Code of the District of Columbia. (p. 3 supra)

2. The judgments of both Courts below in this cause be vacated because the informations are not in the name of the District of Columbia.

3. The judgments of both Courts below be reversed because petitioner Savage was not afforded allocution before sentence was imposed upon him.

4. The judgments of both Courts below be reversed because it is not clear that petitioner Savage was afforded a fair and impartial trial.

5. Each of the judgments below be reversed and the District Court directed to duly proceed to try the validity and constitutionality of the regulations and their authorizing statute, with the consideration and determination of whether, in any different situation such regulations may lawfully be applied in any respect to require any alteration or restriction in use or in structure or finish of any building constructed in the District of Columbia prior to time of the promulgation of the regulations.

6. That each of the judgments below be reversed and the District Court ordered by due process of law to duly proceed to consider and determine in the light of the facts the applicable will of the law in all respects to the rights of the parties; and that the same proceed in the light of the applicable decisions of this Court, and our Constitution and laws.

## CONFLICTS.

That the decisions of the Courts below herein complained of are each in direct conflict with decisions of this Honorable Court, including in *Waley* v. *Johnston*, 316 U. S. 101, 104; *Heuse* v. *Mayo*, 324 U. S. 42, 45; *Williams* v. *Kaiser*, 323 U. S. 471, 473, 474; *Walker* v. *Johnston*, 312 U. S. 275, 286; *Price* v. *Johnston*, 334 U. S. at 291 of No. 2 in brown cover quoted from on p. 8 Infra.

WHEREFORE, your petitioners respectfully pray that a writ of Certiorari issue under the seal of this Honorable Court to the United States Court of Appeals for the District of Columbia commanding that Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in said cause, to the end that this case may be reviewed and determined by this Honorable Court as provided by the statutes of the United States; and that the judgment herein of said Court of Appeals be revised by this Honor-

able Court, and for such other and further relief as to this Court may seem proper.

IRA CHASE KOEHNE
JOHN A. SAVAGE

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
*Counsel for Petitioners for Certiorari.*

UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA, *ss:*

John A. Savage, being duly sworn deposes and says; I am a petitioner for Certiorari in the above action. I have read the foregoing petition and the factual averments of the same are true as I verily believe.

Sworn to and subscribed before me this 7th day of January 1949.

WILMA A. MILLER
*Notary Public*
(Seal) District of Columbia.

## CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition for a writ of certiorari; and in my considerate opinion such petition is well founded, and should be granted by this Honorable Court in furtherance of justice; and said petition is not presented for any purpose of delay.

IRA CHASE KOEHNE,
*Counsellor at Law.*

## INVITATION TO GOVERNMENT.

Each of the Government officers acting herein for respondents is hereby invited in the public interest to consider—

(A) The applicability to this cause of the position of such officers taken in *Waley* v. *Johnston*, 316 U.S. 101, and

(B) The affordance of due process of law required in the taking of one's liberty seems to require the trial Courts investigation and a statement of the grounds upon which it dismissed the petition for habeas corpus, to not foreclose petitioner's right of amendment (see top R. 20).

Upon both such questions this Honorable Court affords definite light in *Price* v. *Johnston*, 334 U.S. at 291 in No. 2 of brown paper cover, that

> " • • • Whether petitioner does or does not have any new information is a matter unrevealed by anything before it or before the Circuit Court of Appeals. It is a matter which should be determined in the first instance by the District Court. And it is one on which petitioner is entitled to be heard either at a hearing or through an amendment or elaboration of his pleadings. Appellate Courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed. Cf. *Kennedy* v. *Silas Mason Co.*, 334 U.S. 249. • • "

and at 276 in said report of *Price* v. *Johnston* this Court said—(here applied to the District Court dismissal)

> " • • • There is nothing whatever to indicate that the dismissal stemmed from the court's belief that the allegation was insufficient on its face or that it was obviously without merit."

Under the statute (p. 3 supra) dismissals without any hearing the petition averments must be taken as true, and petitioner put to his supporting evidence before dismissal becomes due process of law.

Hence, it may seem that, kindred to *Waley* v. *Johnston*, supra, due reversal and remand to the District Court ought to be had in order to afford such due process herein.

IRA CHASE KOEHNE
ORILLE C. GAUDETTE
*Attorneys for Petitioners.*

# Supreme Court of the United States

OCTOBER TERM, 1948.

---

No.

---

IRA CHASE KOEHNE AND JOHN A. SAVAGE, *Petitioners,*

v.

W. BRUCE MATTHEWS, United States Marshal and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents.*

---

## BRIEF ON CERTIORARI.

---

The applicable statute appears at bottom of Petition p. 3. It confines the standard of judicial allowability of the petition for habeas corpus to the face of such petition. In fixing thus such standard the statute says "if the facts set forth in the petition" for habeas corpus make a prima facie case, "the Court or justice applied to" "shall forthwith grant the writ." Statute p. 3 supra.

The statute is of great weight due to its simple clarity. Compared to such great weight, that of a prima facie case is far less ponderous but more persuasive, simple and of easy understandability.

This is a mere initial preview. The main brief and weight of authority is in R. 11-23.

The granting of Certiorari here petitioned for will afford great benefit to many persons, especially in the District of

Columbia, where, by the application of later enacted regulations to prior constructed, and hence lawful structures, which licenses are enforced by criminal prosecutions.

In countries where the government owns at least all of the land, licenses of all types are of great prevalency.

In the United States, where the people own most of the land, it would be most disturbing in all respects if a practice would be permitted where license requirements may compel usually quite expensive changes in prior constructed buildings. Such practices would be very un-American and breed less and less certainty, and less public respect for government, and would seem to be most destructive of the public interest.

The granting of certiorari would be quite beneficial in the public interest and generally constructive.

Thanks for your interest.

Ira Chase Koehne,
2803 18th St. N. W.,
Washington 9, D. C.,
Hobart 0032.

Orille C. Gaudette,
1011 Dupont Circle Bldg.
Washington, D. C.
Dupont 7165.
*Attorneys for Petitioners.*

NO. 502

MAR 2 1949

CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

---

IRA CHASE KOEHNE and JOHN A. SAVAGE, *Petitioners,*

v.

W. BRUCE MATTHEWS, United States Marshal, and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents.*

---

**On Petition for a Writ of Habeas Corpus to the United States Court of Appeals for the District of Columbia.**

---

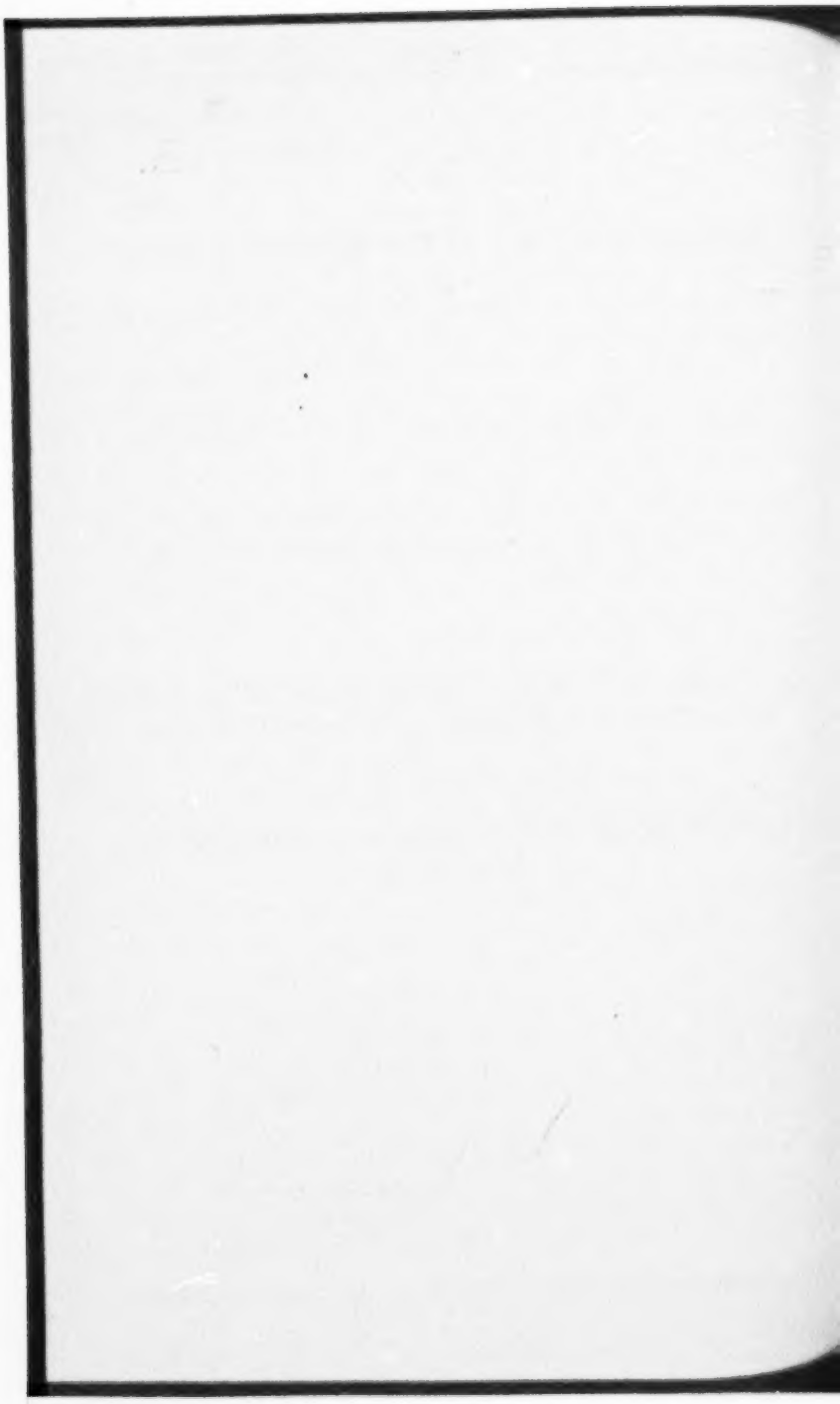
## RESPONSE BY PETITIONERS TO MEMORANDUM OF RESPONDENTS.

---

IRA CHASE KOEHNE,
2803 18th St., N.W.,
Washington 9, D. C.,
Hobart 0032

ORILLE C. GAUDETTE,
1011 Dupont Circle Bldg.,
Washington 9, D. C.,
Dupont 7165
*Attorneys for Petitioners.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



## INDEX.


Page

The six great questioners of Mr. Kipling..... 2

New Questions, 1-5A, presented arising from consideration of Respondent's Memo and its new matters 2-6

Jurisdiction-less Denial by District Court Q. 1, p. 2; brief p. 7

Appearance of Respondent's Counsel (R. 7) no waiver of next above.....Q. 1A, p. 2; axiomatic

Want of Judicial Power and Due Process in stated mistreatment of Petitioner Savage..Q. 1B, p. 3; brief p. 7

Want of Due Process and Procedure according to law in Savage's purported Trial and Deprivation of Liberty by the Information naming no governmental Complainant .....Q. 1C, p. 3; brief p. 7

Unlawful denial through local court rule of recourse to district judge of petitioner's choice, afforded by Statute herein.....Q. 1D, p. 3, 4; brief p. 9

The (R. 5) Trial Court order "Issuance of Writ Denied" is star-chamber-like, no due exercise of judicial power required by Q. 1 and not according to the will of the law.....Q. 2, p. 4; brief p. 9

In Re multiple mis-statements of fact in Respondent's present brief .....Q. 3, p. 4, 5; brief p. 9

Next preceding matter can't hark back to and vest courts below with power to render Judgments (R. 5, 8) .....Q. 3A, p. 5; brief p. 9

Respondent's counsel's wrongful contention that statutes of general federal applicability apply hereto rather than the local specific Congressional enactments .....Q. 4, p. 5; brief p. 10

In Re Respondent's contention that this Court support the Court next below in its flagrant violation of the hereto applicable Act of Congress (p. 3, Cert. Petition) in deciding this cause according to the

Page

decisions on the appeals of petitioner Savage from his Constitutionless conviction herein, where his being compelled to defend himself in proper person in the Criminal Trial (Municipal) Court, deprived of assistance of Counsel because of which he was unable to present the many complex Constitutional and other questions, without which this habeas corpus cause would be vain; and the inclusion of which in this habeas corpus cause being due procedure in this great writ; and in not deciding this cause according to the averments of the Petition herein (R. 1-5), whose averments, in a denial without hearing, as herein, which, in such event "we must assume that the petitioner's allegations are true. Williams v. Kaiser, 323 U. S. 471, 473, 474," as held in House v. Mayo, 324 U. S. 42, 45, or at least remanded to the trial court for a full presentment and determination of the petitioner's contentions, Price v. Johnston, 334 U. S. 266, 291, 293 Q. 5, 5A, p. 6

## AUTHORITIES.


Judicial Power, Due Process and Art. III, Secs. 1 and 2, provisions of Constitution..... 1
Art. I, Sec. 9, Cl. 2..... 2
Art. III, Secs. 1 and 2..... 2
Statutes applicable, p. 3 Certi. Petition.....3, 11, 12
T. 16, Sec. 801, District of Columbia Code (Certi. Pet. p. 3)..... 5, 6
Kennedy v. Silas Mason Co., 339 U. S. 249..... 7
Price v. Johnston, 334 U. S. 269, 291..... 5, 8
Constitution by Mr. Justice Miller..... 8
Muskrat v. United States, 219 U. S. 346, 356..... 8
Adkins v. Childrens' Hospital, 261 U. S. 525, 544.... 8
Kendall v. United States, 12 Pet. 524, 622..... 8
28 U. S. Code, Sec. 2242 (80th Congress)..... 10
T. 16, Sec. 807, District of Columbia Code..... 11
T. 16, Sec. 806, District of Columbia Code..... 11
T. 23, Sec. 101, District of Columbia Code..... 11, 12
District of Columbia v. Stimpson, 40 App. D. C. 498 (R. 15)..... 12

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.

---

No. 502.

---

IRA CHASE KOEHNE and JOHN A. SAVAGE, *Petitioners,*

v.

W. BRUCE MATTHEWS, United States Marshal, and CURTIS REID, Resident Superintendent, District of Columbia Jail, *Respondents.*

---

**On Petition for a Writ of Habeas Corpus to the United States Court of Appeals for the District of Columbia.**

---

## RESPONSE BY PETITIONERS TO MEMORANDUM OF RESPONDENTS.

---

The respondents ignoring of the applicable Acts of Congress passed for the government of the District of Columbia (Constitution, Art. 1, sec. 8, cl. 17) and its habeas corpus provisions for such District (Certiorari Petition p. 3) and p. 4 and Question 5 hereof; their counsel's material

misstatements in the Memorandum in Opposition (infra) (question 3) (p. 4) and matters arising from study thereof, prompts the following supplement to the Petition for Certiorari herein in the furtherance of justice and Due Process of Law, with the aid of the six great questioners of whom Mr. Kipling says:

> "I keep six honest serving men,
> (They taught me all I knew)
> Their names are What, and Why and When,
> And How and Where and Who."

## NEW QUESTIONS PRESENTED ARISING FROM CONSIDERATION OF MEMORANDUM OF RESPONDENTS AND ITS NEW MATTER.

From this, and the petition for the writ, and its brief, including its p. 8, and that of R. 11-23, the full extent is disclosed of the "judicial" suspensions or neglects to duly employ the due privileges of the great writ of habeas corpus, which suspension or neglect being prohibited by Art. I, Sec. 9, cl. 2 of the Constitution.

**QUESTION 1.** The judgments herein of both courts below are void—because their exercise of judicial power and jurisdiction herein is precluded by Art. III, Secs. 1 and 2, of Federal Constitution, limiting such exercise to controversies between two or more parties: petitioners being before the court by their petition: but the cause was moot until a respondent was duly before the court in such cause: of which respondents' counsel took advantage by refusing service of Motion Papers, etc. (R. 6)

**QUESTION 1A.** The want of appearance of respondents' counsel, and of service of process upon either of respondents herein, (Q. 1) in the District Court, is not waived by the appearance of respondents' counsel (R. 7) in the Court of Appeals proceeding herein, which proceeding being limited to its opinion of the legality of such Trial Court proceeding. (R. 5)

**QUESTION 1B.** Is it the execise of judicial power,—is it due process of law—where a layman in proper person is defending his liberty and property against a criminal charge, without due opportunity to employ counsel of his choice, for the court to permit the defense to be rendered more complex and beyond the ability of such layman because of the consolidation for trial of the three apparently simple though highly technical charges (R. 1, 2, Par. 2, Petition for Certiorari, p. 3 (B)) with the intent to, or having the effect of, misleading such a habeas corpus petitioner into liability of unjust deprivation of his liberty or property, and unnecessarily multiplying the consequent burden upon our courts?

**QUESTION 1C.** Is it due process of law—or procedure according to law,—is it a lawful information,—to charge anyone in this jurisdiction, especially a layman of the class typified in Q. 1B hereof, by a purported information not brought in the name of the District of Columbia, (R. 14) under purported authority of 1940 D. C. Code, Title 16, Sec. 807 (p. 11 hereof) but in which it is said in material part "Vernon E. West, Esq., Corporation Counsel, by .... ..... assistant in his proper person, comes into court and causes the court to be informed and complains that John A. Savage * * * "?

(It would be as vain should a grand jury of the United States come into court in its proper person and complain not in the name of the United States against any one purportedly accused in a purported indictment.)

**QUESTION 1D.** Was it lawful or unlawful that this matter in the trial court was acted upon by Judge F. Dickinson Letts, when the petition for this writ was endeavored to be presented to and before Judge T. Alan Goldsborough, by counsel for petitioners, which endeavor was frustrated by local Rule 9(a) of the District Court purportedly requiring that habeas corpus proceedings be heard by the motions judge, who then was said F. Dickinson Letts; whereas the

applicable statute (Certiorari Petition p. 3) provides that seekers for such writs "may apply by petition to the District Court of the United States for the District of Columbia, or any justice thereof, * * * "

(Wherefore, the choice of petitioners of the justice or judge to hear this writ application, granted by said applicable statute, was denied by a purported local rule of the Trial Court, which is wanting in power to thwart such right duly expressed by the Congress.)

**QUESTION 2.** The blind, reasonless, unexplanatory, star-chamber-like order—"Issuance of Writ Denied"—(R. 5)—is no lawful denial of Question 1, and is no due exercise of judicial power—according to the will of the law, to the serving of which its exercise is limited? Is it not?

**QUESTION 3.** Why was the material mis-statement of fact made (p. 5, Memorandum of the Respondents in Opposition) that "the fact that there had been an appeal was not mentioned in the petition. Nor was there anything to indicate to the District Court that this avenue of relief was unavailable to Savage, or that he had tried it and failed to obtain relief, or that there were any exceptional circumstances in his case which would justify resort to the extraordinary remedy of habeas corpus. * * * "

(Such mis-statements were asserted and spread upon the records of this honorable court in this matter, by respondents' counsel despite the patent facts (a) that the duly verified petition for habeas corpus herein (R. 1-5) definitely asserted the contrary (b) averring in its Par. 2 (R. 1) that petitioner Savage "charged in the Criminal Division of the Municipal Court for the District of Columbia in three separate criminal informations with alleged crimes or offenses * * * " (Par. 8) (R. 4) " * * * was denied the right to have the assistance of counsel required by the Sixth Amendment which compelled "layman" (Savage) to conduct his defense in proper person; that by reason thereof substantial Constitutional questions and other potent facts,

with their settings, were not before the Trial and Appellate Courts by reason thereof, and relator "(Savage)" is without remedy except by virtue of this great writ.")

Why the further material mis-statement of fact made in note 7 of p. 6 of Memorandum of the Respondents in Opposition, that

> "Now it is contended that the regulations were unconstitutional as applied to any building which had been lawfully erected prior to their adoption (Pet. 3-4, 9-10). The contention is clearly without merit. *The District of Columbia Code does specifically exempt all nonconforming uses of buildings which antedate the adoption of a regulation.* * * *."

The mis-statement character of this quotation is apparent by comparing the italicized text thereof typically with 1940 Code of the District of Columbia, Title 5, sections 302, 303, 304, 305, 308, 422, and T. 11 Sec. 616, which are definitely declared applicable to "any building already erected," i.e., erected before the enactment of the statute or regulation as to structures as well as uses per se lawful.

Relative to the whole of such note 7, each of its alleged different aspects will be embodied in an amended habeas corpus petition under the authority of *Price* v. *Johnston*, 334 U. S. 266, 291, and last two paragraphs p. 293, (Preliminary Point No. 2).

**QUESTION 3A.** The presently made material mis-statements of fact, forming the subject of Question 3 hereof, could not hark back to the judgments (R. 5, 8) and vest the courts below with power to render such judgments.

**QUESTION 4.** Respondents counsel seem wrongly to contend in their memorandum for the respondents in opposition, last sentence bottom p. 5, first sentence top p. 6, that the laws of the United States, and not those of the District of Columbia, are applicable to this matter.

(Petitioners cited as applicable and involved herein Title 16, Sec. 801 of 1940 D. C. Code copied (p. 3 Certiorari Petition) which respondents did not deny.)

**QUESTION 5.** Counsel in their memorandum (bottom p. 5, top p. 6) for the respondents in opposition contend despite, or forgetful of, the averments for Petition of Writ (R. 1-5) quoted in the bracketed matter following Question 3 hereof.

(This is the potent reason why the decisions of the Municipal Court of Appeals and of the United States Court of Appeals (R. 7, 8) on the Savage appeals, are not decisive of this habeas corpus different proceeding. Is this not the law which affords protection by restricting all questions of the sufficiency of habeas corpus petitions tc the face of such petitions as required by the applicable statute (1940 D. C. Code, Title 16, Sec. 801, copied p. 3 Certiorari Petition)).

The application hereto of such construction, established in *Price* v. *Johnston, supra,* assures due process of law comprising definite assignment by district courts of their reasons for denial of such writs, and inviting and permitting amendment of petitions rather than the prior course of filing successive habeas corpus petitions which are more burdensome to our courts as well as to parties to such causes.

**QUESTION 5A.** Said last stated statute limits the courts in habeas corpus cases to the averments of the petition for habeas corpus in the determination of questions of the sufficiency of such averments by providing " • • • the court or the justice applied to, if the facts set forth in the petition make a *prima facie* case, shall forthwith grant such writ, • • • "; which provision makes unlawful, or at least not pursuant to law, both the purported decisions of this matter by the United States Court of Appeals (R. 7, 8) where it goes into the Savage appellant proceedings in the Municipal Court of Appeals in the respect in which this habeas corpus proceeding was unlawfully denied upon the grounds found by the courts next below in the denial of the Savage appeal; in which respect petitioner Savage, in

the criminal trial was, by denial of assistance of counsel, unable, in his defense in proper person, to raise the available Constitutional questions and the facts of their settings which resulted wrongfully in his conviction.

**BRIEF.**

A. The memorandum of respondents in opposition, in material parts, is so remote from the applicable facts and law as to be of only minor just and lawful use, as was, for like cause, respondents' brief in the court next below—each being remote from the applicable law because of their misleading of court below, and seeming to attempt to mislead this Honorable Court, to unjustly and unlawfully sustain the District Court herein, by failure to restrict to the face of the petition for habeas corpus questions of the issuance of such writ—pursuant to the mandatory requirement of the applicable statute, Title 16, sec. 801 of 1940 D. C. Code (quoted p. 3 of certiorari petition) which requires that " * * * the court * * * if the facts set forth in the petition make a prima facie case, shall forthwith grant such writ * * * ". Such statute mandate precludes that which occurred in the court next below—obviously the wrongful and unjust sustaining of the denial of this writ without due process of law, and in violation of Art. 1, sec. 9, cl. 2 of our Constitution by suspending or neglecting to duly employ the due and lawful privileges of the writ of habeas corpus, for instance (a) set forth in next above quotation, and (b) such "petition is entitled to the determination in the trial court of "Whether petitioner does or does not have any new information * * * as a matter which should be determined in the first instance by the District Court. And it is one on which petitioner is entitled to be heard either at a hearing or through an amendment or elaboration of his pleadings. Appellate courts cannot make factual determinations which may be decisive of vital rights when the crucial facts have not been developed. Cf. *Kennedy* v. *Silas*

*Mason Co.*, 339 U. S. 249 * * * " *Price* v. *Johnston*, 334 U. S. 266, 291, and its liberalized other holdings. (No. 2 vol. preliminary print.)

B. UPON QUESTION 1.

Mr. Justice Miller, in his treatise on the Constitution, (p. 314) says:

> " * * * It will not do to answer that it is the power exercised by the courts, because one of the very things to be determined is what power they may exercise;" (under the controversy, obviously) "It is, indeed, very difficult to find any exact definition made to hand. * * * It is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a cause before it for decision." (and obviously obtain due appearance or service of process upon, the other party or parties to such controversy).

The above quoted definition was approved in *Muskrat* v. *United States*, 219 U. S. 346, 356.

Mr. Justice Sutherland, in *Adkins* v. *Childrens' Hospital*, 261 U. S. 525, 544, speaks of judicial power as "That power vested in courts to enable them to administer justice according to law."

Says this Court on said article and question, in *Kendall* v. *United States*, 12 Pet. 524, 622,

> "* * * Power must include jurisdiction, which is generally used in reference to the exercise of that power in courts of justice. But power, as used in the Constitution, would seem to embrace both. * * *"

ON Q. 1 B.

The questions raised thereunder have not been heard and determined by the trial court. Hence this cause ought to be remanded for such determination, among other matters, in the affordance of due process herein.

*Price* v. *Johnston*, 334 U. S. 266, 291, quoted from pp. 7, 8 brief.

ON Q. 1 C.

See statute quoted on pp. 11, 12 hereof, and *District of Columbia* v. *Simpson*, 40 App. D. C. 498, 500, quoted (R. 15) while the relevant material part of each of the three informations is quoted (R. 14).

ON Q. 1 D.

The matter and material part of involved statute is quoted therein, and seems thus obviously to be determined favorable to the intent of the statute and of petition.

ON Q. 2.

The questions raised thereunder have not been heard and determined by the trial court. Hence this cause ought to be remanded for such determination, among other matters, in the affordance of due process herein.

*Price* v. *Johnston*, 334 U. S. 266, 291, quoted from p. ..... brief.

ON Q. 3.

Questions 3 and 3A seem self explanatory, and are deemed answerable favorable to petitioners.

ON Q. 4.

It has long been the settled construction of this Court that the Congress having power to enact laws for the United States as well as for the District of Columbia, that in such enactment those for the former have no applicability to the latter where enactment for the latter has been exercised. This cause here and in courts below, being a civil cause. (Rules 1, and 81 (2)). Rules of Civil Procedure whose rule 8(2) requires "a short and plain statement of the claim showing that the pleader is entitled to the relief to which he deems himself entitled."

Statute (certiorari petition p. 3), in part of instant materiality, requires that "the court or justice applied to, if

the facts set forth in the petition makes a prima facie case, shall forthwith grant such writ, * * * ",

Which, with the return of respondents, and appropriate replies thereto of petitioners, supported by the evidence, afforded records in each case * * *. Hence, the petition (R. 1-5) was drafted in conformity with Rules 1 and 81 (2), and 8 (2) of Rules of Civil Procedure, and said local statute, rather than as a tedious, wrongful preliminary setting forth of matters of evidence, which respondents' brief herein erroneously presents.

The same is applied to the Federal Habeas Corpus statutes by title 28, U. S. Code sec. 2242, enacted by 80th Congress, providing that habeas corpus petitions "may be amended or supplemented as provided in the rules of procedure applicable to civil actions."

This spirit of justice seems kindredly applicable to the hereto applicable local statute p. 3 Certi. Petition.

Such spirit, and petitioners' construction of such local statute in the form of the petition for habeas corpus (R. 1-5) seems fully confirmed by the first two local statutes, italicized parts, copied in the Appendix hereto.

Questions 5 and 5A relate to statutory construction and seem sufficiently explanatory.

WHEREFORE, in the affordance of due process as lately exemplified in *Price* v. *Johnston, supra,* this cause ought to be remanded to the District Court with appropriate instructions.

Respectfully,

IRA CHASE KOEHNE,
2803 18th St., N.W.,
Washington 9, D. C.,
Hobart 0032

ORILLE C. GAUDETTE,
1011 Dupont Circle Bldg.,
Washington 9, D. C.,
Dupont 7165
*Attorneys for Petitioners.*

## APPENDIX.

D. C. Code 1940 Title 16-807 (24:207) Traversing Return. "Any person at whose instance or in whose behalf a writ of habeas corpus has been issued may traverse the return thereto, *or plead any matters showing that there is not a sufficient legal cause for his confinement or detention,* and the court or justice may issue process for witnesses or for the production of papers, which shall be served and enforced in like manner as similar process issued in a cause depending in court; if the court or justice shall be satisfied of the materiality of the testimony proposed to be adduced. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, sec. 1149)"

Title 16-806-(24:206) Inquiry into cause of detention—Bail-Bond. "On the return of the writ of habeas corpus, and the production of the person detained, *the court or justice shall immediately inquire into the legality and propriety of such confinement or detention, and if it shall appear that such person is detained without legal warrant or authority, he shall immediately be released or discharged;* or if the court or justice shall deem his detention to be lawful and proper, he shall be remanded to the same custody, or in a proper case, admitted to bail, if he be confined on a charge of a bailable offense, and if he be bailed, the court or justice shall require a sufficient bond or recognizance to answer in the proper court, and transmit the same to said court. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, sec. 1148)"

D. C. Code 1940. Title 23-101. CONDUCT OF PROSECUTION—Party Plaintiff. "The attorney for the District of Columbia shall be known as the Corporation Counsel.

Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia, and by the Corporation Coun-

sel or his assistant. All other criminal prosecutions shall be conducted in the name of the United States and by the attorney for the United States for the District of Columbia or his assistants. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, sec. 932; June 30, 1902, 32 Stat. 537, ch. 1329).

Applied in *District of Columbia* v. *Simpson*, 40 App. D. C. 498; (R. 15), *United States* v. *Capital Trac. Co.*, 38 App. D. C. 469; and *District of Columbia* v. *Moyer*, 68 App. D. C. 98, 93 Fed. (2d) 527.

# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 502

IRA CHASE KOEHNE AND JOHN A. SAVAGE,
PETITIONERS

*v.*

W. BRUCE MATTHEWS, UNITED STATES MARSHAL, AND CURTIS REID, RESIDENT SUPERINTENDENT, DISTRICT OF COLUMBIA JAIL

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

On December 11, 1946, three informations were filed against petitioner Savage in the Municipal Court for the District of Columbia. The first charged him with using certain premises for a purpose other than a single family dwelling without having obtained a "certificate of occupancy."[1]

[1] D. C. Code (1940), § 5-413, as amended, provides in pertinent part:

"To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia



824258—49

The second and third charged him with operating the same premises as a rooming house without a license from June 14, 1946, to October 31, 1946, and from November 1, 1946, to December 11, 1946, respectively.[2] On April 12, 1947, after a trial before the court, Savage was convicted on all three informations and he was sentenced to a fine of $10 or 10 days in jail in default of payment in the occupancy permit case,[3] and in each of the two license cases he was sentenced to a fine of $100 or

---

* * * the Zoning Commissioner * * * is hereby empowered * * * to regulate * * * the uses of buildings * * * for trade, industry, residence, recreation, public activities, or other purposes; * * *."

Section XX of the Zoning Regulations, issued pursuant to this statute, prohibits the use of any building for any purpose other than a single-family dwelling without the issuance of a "certificate of occupancy" by the Inspector of Buildings.

[2] The District of Columbia Code provides that no person shall engage in any business for which a license fee is imposed without first having obtained a license. D. C. Code (1940), § 47–2301. It is further provided that the Commissioners of the District of Columbia may in their discretion require licenses for other businesses in addition to those specifically enumerated in the Code. D. C. Code (1940), § 47–2344. By regulations issued pursuant to this act, the Commissioners have required the operators of rooming houses to obtain licenses after having complied with certain health requirements.

[3] The District of Columbia Code provides that the penalty for such a violation shall be "a fine of not more than $100 per day for each and every day such violation shall continue." D. C. Code (1940), § 5–422. Where the Municipal Court imposes a fine it may commit the defendant to jail in default of payment for a period not exceeding one year. D. C. Code (1940), § 11–606.

30 days in jail [4] in default of payment. The sentences were ordered to run consecutively.

Savage appealed to the Municipal Court of Appeals for the District of Columbia, contending that the licensing statute and regulations were unconstitutional, that no proper notice was given why his applications for an occupancy certificate and a license were refused, that he was entitled to a jury trial, that he had been subjected to double jeopardy, that he was brought to trial upon one of the three informations without proper notice, that the court refused to permit him to make a statement prior to sentence, and that he was denied the right to reopen the case to offer further evidence to refute testimony which had surprised him. The Municipal Court of Appeals discussed these contentions in a long and careful opinion and affirmed the judgment of the trial court on July 18, 1947. *Savage* v. *District of Columbia*, 54 A. 2d 562–570. A rehearing was denied on September 3, 1947.[5] Thereafter, the United States Court of Appeals for the District of Columbia Circuit denied a petition for allowance of an appeal to that court (R. 7).

---

[4] The penalty provided in cases of this nature is a fine of not more than $300 or imprisonment for not more than 90 days. D. C. Code (1940), § 47–2347.

[5] Since the record of the proceedings up to this point has not been included in the record filed in this Court, we have relied upon the opinion of the Municipal Court of Appeals for the above-stated facts. Petitioners, while attacking the legal conclusions of the opinion, do not challenge the accuracy of its factual statements.

Apparently Savage then refused to pay the fines and went to jail. The present proceeding was begun on January 20, 1948, by the filing of a petition for a writ of habeas corpus in the District Court for the District of Columbia, in which the United States Marshal and the Superintendent of the District jail were named as respondents.* For the most part the grounds urged for relief were those already passed upon by the Municipal Court of Appeals (R. 1–4). In addition, it was alleged that Savage had been given only one day to obtain counsel, thus being deprived of the effective assistance of counsel, and that the informations were invalid because the District of Columbia was not named as accuser (R. 2–3, 4; cf. R. 14–16). Issuance of the writ was denied, without a hearing and apparently without answer by the Government, on the same day the petition was filed (R. 5). This order was affirmed in a *per curiam* opinion by the Court of Appeals for the District of Columbia Circuit on July 19, 1948 (R. 7–8; 169 F. 2d 889), and a petition for a rehearing was denied on September 27, 1948 (R.

---

*The petition was filed by petitioner Koehne *ex relatione* Savage. The Government's brief in the court below states that Savage has served ten days of his sixty-five day sentence and that the balance of his partially commuted fine is now approximately $177. We have been informed by the Clerk of the Court of Appeals for the District of Columbia Circuit that Savage was admitted to bail by that court pending appeal in the present habeas corpus proceeding and that the order is still in effect.

24). On December 23, 1948, the time for filing a petition for certiorari was extended by order of the Chief Justice to January 7, 1949 (R. 28), on which day the petition was filed.

It is contended that the habeas corpus petition stated facts which, if true, entitled Savage to release, and that the district court erred in denying the Petition without a hearing (Pet. 4–5, 8, 9). However, examination of the petition reveals that some of the alleged grounds for relief were mere conclusions of law, unsupported by allegations of fact. All the other contentions made in the petition involved alleged errors in the proceedings in the municipal court which were correctible by appeal to the Municipal Court of Appeals, by petition for allowance of appeal to the United States Court of Appeals, and by petition for a writ of certiorari in this Court. The fact that there had been an appeal was not mentioned in the petition. Nor was there anything to indicate to the district court that this avenue of relief was unavailable to Savage, or that he had tried it and failed to obtain relief, or that there were any exceptional circumstances in his case which would justify resort to the extraordinary remedy of habeas corpus. Consequently, the district court was justified in concluding from the face of the petition that it was simply an attempt to make the writ of habeas corpus do service for an appeal. *Sunal* v. *Lage*, 332 U. S. 174; *United States ex rel. Mc-*

*Cann* v. *Adams,* 320 U. S. 220. The petition failed to state facts requiring the issuance of the writ and it was properly denied without a hearing.

Furthermore, a comparison of the allegations of the habeas corpus petition with the opinions of the courts below fails to reveal any error in the trial proceedings. Most of the contentions of the habeas corpus petition are fully disposed of in the painstaking opinion of the Municipal Court of Appeals and we think it unnecessary to do more than to refer to that opinion here.[7] *Savage* v. *District of Columbia,* 54 A. 2d 562. So far as concerns the two contentions not raised in the Municipal Court of Appeals, it is obviously frivolous to argue that, because the informant was a Corporation Counsel, the prosecution was not brought in the name of the District of Columbia. See D. C. Code (1940), § 11–616. And the court

[7] The attack on the constitutionality of the statutes under which Savage was convicted seems to have taken a different aspect. In the Municipal Court of Appeals it was argued that the regulations in question were unreasonable and that power to adopt such regulations could not be delegated to the District Commissioners. 54 A. 2d at 564–566. Now it is contended that the regulations were unconstitutional as applied to any building which had been lawfully erected prior to their adoption (Pet. 3–4, 9–10). The contention is clearly without merit. The District of Columbia Code does specifically exempt all nonconforming uses of buildings which antedate the adoption of a regulation. But there is no contention that Savage's use antedated the regulations. And there can be no doubt that the regulations would apply to a use of a prior constructed building begun subsequent to their adoption.

below, which had the record of the municipal court proceedings before it,[8] has shown (R. 7–8; 169 F. 2d 889) that there is no basis for the contention that Savage was denied the right to have assistance of counsel.

Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
*Solicitor General.*
ALEXANDER M. CAMPBELL,
*Assistant Attorney General.*
ROBERT S. ERDAHL,
JOSEPH M. HOWARD,
*Attorneys.*

FEBRUARY 1949.

[8] The record of the municipal court proceedings was already before the United States Court of Appeals as the result of the petition for allowance of appeal to the court from the Municipal Court of Appeals. The United States Court of Appeals had the right to consult the record of the prior proceedings contained in its own files when it considered the appeal in the habeas corpus proceeding. *Craemer v. Washington State*, 168 U. S. 124, 129; *Andersen v. Treat*, 172 U. S. 24, 29.

U. S. GOVERNMENT PRINTING OFFICE: 1949

FILE COPY

FILED
MAR 22 1949
CHARLES ELMORE CROPLEY
CLERK

NO. 502

IN THE

# Supreme Court of the United States

OCTOBER TERM 1948.

---

IRA CHASE KOEHNE and JOHN A. SAVAGE, *Petitioners*,

v.

W. BRUCE MATTHEWS, United States Marshal, and Curtis Reid, Resident Superintendent, District of Columbia Jail, *Respondents*,

---

## PETITION FOR REHEARING LIMITING THERETO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

---

IRA CHASE KOEHNE,
2803 18th Street N. W.
Washington 9, D. C.
Hobart 0032

ORILLE C. GAUDETTE,
1011 Dupont Circle Building
Washington 9, D. C.
Dupont 7165

*Attorneys for Petitioners.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM 1948.

---

No. 502.

---

IRA CHASE KOEHNE and JOHN A. SAVAGE, *Petitioners,*

v.

W. BRUCE MATTHEWS, United States Marshal, and Curtis Reid, Resident Superintendent, District of Columbia Jail, *Respondents,*

---

## PETITION FOR REHEARING LIMITING THERETO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

---

## PETITION FOR REHEARING OF, AND LIMITING THERETO, THE PETITION FOR CERTIORARI.

---

*To the Honorable, The Chief Justice of the United States, and The Associate Justices of The Supreme Court of the United States.*

1. Your petitioners, Ira Chase Koehne and John A. Savage, respectfully submit this, their Petition for Rehearing of their Petition herein for Certiorari to the United States Court of Appeals for the District of Columbia whose grounds are hereby confined to those hereinafter stated.

2. This petition for rehearing is founded upon other substantial grounds available to petitioners although not previously presented applied to the court next below solely because of the excusable grave inadvertence of petitioner's counsel herein occasioned by his age of 77 especially accentuated by his then grave nervous, thought-distracting painful infliction (similar to that of the King of England) caused by the inflamed swollen tissues of his lower legs, particularly his right one, which was then medically believed would have to be amputated below the knee, but which legs, under new treatment, have lately commenced to heal and be subjected to only occasional far less pain.

3. That said other available substantial grounds, upon which this rehearing petition is founded, being each of these grounds, directly as well as alternatively, stated in this court's Rule 38 (5 c) which is adopted as a part hereof. Each of said grounds being flagrantly, wilfully disregarded in this cause by the United States Court of Appeals for the District of Columbia, as disclosed (R. 7, 8); each substantial violation of each of said grounds being more briefly set forth in other than the order in which they appear in said Rule 38 (5 c).

3A. The applicable statute (note 1, p. 3 of Certi. Pet.) in effect commands that petitions for the writ of habeas corpus shall have the privilege of being, or not, granted accordingly as their respective civil action petitions (R. 1-4) do, or do not, make a prima facie case.

3B. The hereto applicable Constitutional provisions being Art. 1, Sec. 9, cl. 2, and the Due Process clauses of the Fifth and Fourteenth Amendments; the former reading:

> "The Privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of Rebellion or Invasion the public Safety may require it."

3C. Each of the decisions In Re, 3A and 3B, being doubtless "of general importance", and each "a question of substance relating to the Constitution, • • • or statute of the United States, which has not been, but should be, settled by this court;" (3) and "where that court has not given proper effect to an applicable decision of this court". (4)

3D. Instead of that court next below being constitutionally, and by applicable statute, duly confining itself to the face of the Habeas Corpus petition, and reversing and duly remanding this cause to the trial court, it, to the contrary, grossly denied said 3A and 3B provisions of grave importance, and reveled in unlawfulness 3A, 3B, 3C, (R. 7, 8), and concealing from the record of this cause, by its silence thereon, that incident to the denial of the appeals of layman Savage that court, next below, denied the civil action fundamental right of petitioners to both prove their habeas corpus petition, and to duly amend the same as per.

(1) *Price v. Johnston*, 334 U. S. 266, 291-294, decided about two months prior to that of court next below. (R. 7)

(2) In *Ex parte Yerger*, 75 U. S. (8 Wall.) 85, 95, say this court "The term of this provision necessarily imply judicia action".

(3) A must in this jurisdiction for judicial efficiency.

(4) Typically, *Walker* v. *Johnston*, 312 U. S. 275, 286, quoted from (R. 13); *House* v. *Mayo*, 324 U. S. 42, 45; quoted from (R. 12, 13); *Waley* v. *Johnston*, 316 U. S. 101, 104 (R. 12).

3E. Instead of lawfully confining said constitutional and statute provisions (3B hereof and note 1, Cert. Pet. p. 3 to the face of each petition for the Habeas Corpus writ; and affording civil action amendment privileges thereto (1) (~~preceding page~~) said other court (next below) violated each of said provisions and unlawfully deprives petitioners of the equal protection of the law, in violation of our Con-

stitution whose Fourteenth Amendment denies to the states such deprivation power, but such instrument fails to grant such power to the United States, which renders such power non-existent in our government.

WHEREFORE, it appears that the will of the law in this and like causes requires that the judgments herein be vacated, and that the court next below summarily be directed to remand this cause to the trial court, with directions to vacate its judgment herein and to duly consider any amendment of their petition of which they may be advised; and that this cause be considered and acted upon judicially according to the will of the law, including any applicable decisions of this court, or otherwise as this court may duly determine.

Respectfully submitted,

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
*Attorneys for Petitioners.*

## CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition for rehearing and reconsideration in the matter of the craved petition for certiorari whose grounds are herein and hereinbefore restricted to the grounds above specified which are to other substantial grounds not previously presented applied as aforesaid because of the grave excusable inadvertence specified in Paragraph 2 hereof;

And I further certify that the foregoing is presented in good faith, and not for delay, but in furtherance of justice.

IRA CHASE KOEHNE
*Counsellor at Law*
*for the Petitioners.*

## MEMORANDUM.

The court next below in this cause disobeyed not only the Command of the statute (Cert. Pet. p. 3 note 1) that it "shall forthwith grant such writ * * * if the facts set forth in the petition make a prima facie case * * *" but it furthermore ignored or defied this court and its supervisory powers over subordinate courts; as well as the further typical command of this court in *Botany Mills* v. *United States*, 278 U. S. 289, that

> "* * * When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. Raleigh, etc. R. R. Co. v. Reid, 13 Wall. 269, 270; Scott v. Ford, 52 Ore. 288, 296."

In such multiple disobedience of statute and the authorative guidance of this court, the court next below also sanctioned the like violations of the trial court; as also directly violated the constitutional rights of petitioner Savage as indicated in 3B, 3D and its four supplements.

Wherefore the granting of this petition is craved in furtherance of the administration of justice under the supervising powers of this court.

Respectfully,

IRA CHASE KOEHNE,
ORILLE C. GAUDETTE,
*Attorneys for Petitioners.*